

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LANDO L. LYNCH,)
Petitioner,) Civil Action No. 2:13-01493-TFM-CRE
v.) Senior District Court Judge
JEROME R. WALSH, Superintendent, and) Terrence F. McVerry
THE ATTORNEY GENERAL OF THE)
STATE OF PENNSYLVANIA,)
Respondents.)

MEMORANDUM ORDER

Pending before the Court is the Petition for Writ of Habeas Corpus filed by Petitioner, Lando L. Lynch (ECF No. 4), in which he challenges the judgment of sentence that was imposed upon him by the Court of Common Pleas of Allegheny Count on June 25, 2003, after a jury convicted him of first degree murder, a violation of the Uniform Firearms Act, and one count of possessing an instrument of crime. The matter was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules of Court for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation (ECF No. 22) on June 20, 2016, recommending that the Petition for Writ of Habeas Corpus be denied and that no certificate of appealability be issued. On July 8, 2016, Petitioner filed timely objections to the Report and Recommendation, in which he raises two issues. (ECF No. 25). For the reasons that follow, however the Court finds that the objections do not undermine the recommendation of the Magistrate Judge.

First, Petitioner objects to the Magistrate Judge’s recommendation that Claims 1 and 2, which pertain to trial counsel’s alleged failure to call Viola Jones and Myron Cox to testify, be dismissed. The PCRA Court found that that trial counsel credibly testified that he could not locate either of these two witnesses. The PCRA Court determined that Petitioner’s claims to the contrary were simply not credible. Thus, the PCRA Court concluded that trial counsel was not ineffective for failing to call these witnesses; nor was Petitioner at all prejudiced. The Magistrate Judge recommended the dismissal of these claims because she found “no basis to second guess [the PCRA Court’s] credibility determination.” R&R at 11. This Court agrees. Petitioner has not established by clear and convincing evidence that the PCRA Court’s factual finding is incorrect, as is necessary to rebut the presumption of correctness attached to that finding. *See* 28 U.S.C. § 2254(e)(1).

Second, Petitioner objects to the Magistrate Judge’s recommendation that Claims 5 and 7 be denied. In these claims, Petitioner alleged that the Commonwealth violated its obligations under *Brady* by failing to turn over information from pretrial interviews with Tracy Johnson and Darcell Boyd and, in turn, that the trial court erred in not granting a mistrial on this basis. The Magistrate Judge recommended dismissal of these claims because she concurred with the PCRA Court’s finding that Petitioner failed to establish that he was prejudiced by the Commonwealth’s failure to disclose the statements. Petitioner has not established that the Magistrate Judge erred in her analysis. His mere disagreement with her decision is not enough to show that she erred in finding that the Superior Court’s decision was not contrary to, or an unreasonable application of, Supreme Court precedent.

Accordingly, after *de novo* review of the Petition and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 3rd day of August, 2016:

IT IS ORDERED that the Petition for Writ of Habeas Corpus filed by Lando L. Lynch is **DENIED** and that no certificate of appealability shall issue.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 22) filed June 20, 2016, is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

BY THE COURT:

s/ Terrence F. McVerry
Terrence F. McVerry
Senior District Court Judge

cc: **Lando L. Lynch**
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